IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6057 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 & 2 YES; 3 to 5 NO

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JAGDISHCHANDRA N. TRIVEDI - Petitioner(s)
Versus
TRUSTEE/PRINCIPAL & 2 - Respondent(s)

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Appearance :
MR RR VAKIL for Petitioner(s) : 1,
MR NC SHAH for Respondent(s) : 1 - 2.
MR KP RAWAL ASSTT GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 04/04/2006

ORAL JUDGMENT

1. By the present petition purporting to invoke Article 226 of the Constitution, the petitioner has, in reality, challenged the judgment and order dated

7.2.2006 of the Gujarat Secondary Education Tribunal, Ahmedabad, in Applications No.111 of 2002 and 146 of 2002 whereby dismissal from service of the petitioner is upheld. The main prayer in the petition is to issue appropriate writ or direction quashing the aforesaid order as also to set aside the order dated 4.6.2002 by which the petitioner was dismissed with effect from 10.6.2002 by way of punishment. The learned counsel for the petitioner fairly conceded that, since the order of the Education Tribunal was called into question by the petitioner on a solitary ground after fulfledged hearing by the Tribunal and adjudication of the matter, the supervisory jurisdiction of this Court under Article 227 could more appropriately be invoked and, therefore, he requested to consider the petition also under Article 227 of the Constitution.

2. The simple facts, as far as they are relevant, are that the petitioner was serving as an Assistant Teacher under respondents No.1 and 2 and attracted the charges of acts of misconduct on as many as 11 counts which included taking illegal benefit of leave travel concession, giving false undertaking, producing tampered ration card and addressing the male principal as a lady. Upon issuance of chargesheet and holding of an enquiry, he attended 8 sittings out of 17 meetings and disputed the status of the school as a minority institution.

The enquiry officer returned the finding, in effect, that all the charges levelled against the petitioner stood proved and, as a result thereof, the petitioner came to be dismissed.

3. Upon an application being made to the Tribunal, it was found and recorded in the impugned judgment that the petitioner was given sufficient opportunity by the enquiry officer and he had remained absent and chosen not to cross-examine the witnesses of management on his own volition. In short, the enquiry was found to have been conducted by observing principles of natural justice. The Tribunal found no reason to interfere with the punishment on any ground after perusal of the record and consideration of the contentions of the petitioner.

4. One of the grounds agitated before the Tribunal and elaborated before this Court was that the disciplinary proceedings were required to be conducted in accordance with the provisions of the Gujarat Secondary Education Act, 1972. There were the provisions of section 36 of that Act which required the manager of the school to give to the delinquent a reasonable opportunity of showing cause against the action proposed to be taken and even a minority institution was not exempt from the operation of that provision. It was submitted that

regulations were made by the Gujarat Secondary Education Board in exercise of the powers conferred by section 53 of the Gujarat Secondary Education Act, 1972 and, admittedly, such regulations could be made for the purpose of carrying into effect the provisions of the Act. The relevant regulations in respect of conduct and discipline were Regulations No.27 and 27 (A). However, by virtue of Regulation No.43, minority institutions were exempt from the operation of several regulations, including Regulation No.27. The contention and argument of learned counsel Mr.Vakil was that, although the operation of Regulation No.27 was excluded, the provisions made in the Appendix under Regulation No.27 (A) applied even to minority institutions. And, the provisions made in Appendix-A, prescribed under the provisions of Regulation 27 (A), required departmental enquiry to be conducted by a committee of three members whereas, in the present case, admittedly, the enquiry was conducted by a one-member committee.

5. Learned counsel Mr.N.V.Gandhi, appearing for the respondent, pointed out from the regulations that the regulations and the amendment thereof were not happily worded, but it was clear from the sequence of sub-clauses of Regulation No.27 that, after sub-clause 8 of the Regulation, Regulation No.27(A) was inserted and, even thereafter, there were sub-clauses

9 and 10 of the same Regulation No.27. That clearly indicated that the so-called Regulation No.27 (A) was a sub-clause and an integral part of Regulation No.27 which was expressly made inapplicable to minority institutions.

6. Having regard to the statutory scheme as described hereinabove and, in absence of the original amendment or text of the Regulations, relying upon the book of Regulations supplied by the learned counsel Mr.Vakil and published in 2001 by the Gujarat Secondary Education Board, there is no escaping the conclusion that the Regulation No.27(A) is a part of Regulation No.27 and the Appendix prescribed under Regulation No.27(A) did not apply in the case of the respondent institution. No other ground is canvassed or made out on behalf of the petitioner and neither any prejudice nor any injustice could be pointed out. Therefore, in short, no ground is made out to interfere with the impugned judgment and order. Although no ground is made out to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution and the petition could only have been made and entertained under the supervisory jurisdiction of this Court under Article 227 of the Constitution, the Court has heard and considered the above contentions of the petitioner to ascertain whether a writ of mandamus or any other appropriate order could be made in the facts of the

case. The contention and request made on behalf of the petitioner to permit him to repay the wrongfully claimed and obtained amount of L.T.C. with some penalty in view of the government resolution permitting such repayment is also considered and rejected along with the petition in the overall facts and circumstances of several other charges also proved against the petitioner.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)